IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5819 OF 2005

The State of Maharashtra ...Applicant

Versus

Udai Kashinath Adhikari ...Respondent

Shri A.S.Shitole, A.P.P for the Applicant.

Smt Jahan Ara Sarkhot for the Respondent.

CORAM : A. S. OKA, J.

DATE : DECEMBER 12, 2006.

P.C.:

1. Heard the learned A.P.P for the State. The acquittal of the Respondent is for offences under section 379 of the Indian Penal Code and sections 39 and 33 of the Electricity Act, 2003.

2. The allegation of the prosecution is that the Respondent who is running a plastic factory tampered with the electric meter and committed theft of 2,71,374 units of electricity. Perusal of the impugned judgment shows that the learned Judge has considered the evidence of all the prosecution witnesses. The case of the prosecution is that Shri Save, Shri Bhojane and Shri Bendare visited the factory of the Respondent.

The complaint was filed by one Shri Shahapurkar. Though witness summons was repeatedly issued to Shri Shahpurkar, he did not remain present before the court. The P.W.3 Shri Mohanan stated that he heard from P.W.1 Shri Save that two plastic seals put on the meter were duplicate. In the cross-examination he admitted that he was unable to say anything about duplicate plastic seals. The evidence of the said witness is a hearsay evidence.

3. The court also considered the evidence of P.W.1 Shri Save who was a testing engineer employed by the Maharashtra State Electricity Board. The learned Judge observed that there was nothing on record to show that the check meter was working properly and it was fit for testing. P.W.2 admitted that he has taken education upto 10th standard and he was not an expert. Therefore, the learned Judge held that there was no direct evidence on record to show that the Respondent tampered with the meter or he tampered with the seal. Apart from this fact, the learned Trial Judge found that no evidence was led to show that the Respondent was the proprietor or the owner of the factory. The learned Judge held that prosecution has failed to prove

that two TDK-11 lead seals or two TDK-1 seal were attached to article A (i.e. the meter).

4. As the prosecution failed to prove that the Respondent had tampered with the meter and had committed theft of electricity, the learned Trial Judge has passed an order of acquittal.

5. I find that the view taken by the learned Trial Judge is a possible view. No case is made out for grant of leave. Application for leave is rejected.

JUDGE